IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.1.2007

CORAM:

THE HON'BLE MR.JUSTICE.S.TAMILVANAN

Criminal Revision Case No.2046 of 2004

Tmt. Lakshmi ...Petitioner

-Vs-

1. State of Tamil Nadu,
   rep. By Sub-Inspector of Police,
   Mohanure Police Station,
   Namakkal District.
   (Crime No.531 of 2002)
2. Kuppusamy
3. Veerappa Gounder
4. Murugesan
5. Lakshmi
6. Kuppayee
7. Baggyam
8. Subbarayan
9. Somasundaram ... Respondents

Criminal Revision preferred against the judgment dated 28.9.2004 made in C.C.No.77 of 2003, on the file of the Court of Judicial Magistrate No.2, Namakkal, acquitting respondents 2 to 9/accused from the charges under Sections 147, 148, 430 and 506 II I.P.C.

For Petitioner : Mr.M.Sathyanarayanan
For Respondents : Mr.N.Manokaran for RR 2 to 9
Mr. Hasan Mohamed Jinnah
Govt. Advocate (Crl. side)

O R D E R

This Criminal Revision is directed against the judgment of acquittal dated 28.9.2004 made in C.C.No.77 of 2003 on the file of the Judicial Magistrate No.2, Namakkal.

2. Respondents 2 to 9 in the criminal revision are the accused 1 to 8 and the revision petitioner is the de-facto complainant, who was also examined as P.W.1, before the trial court.

3. As per the prosecution case, on 1.9.2002 at about 1.30 p.m., when the revision petitioner/P.W.1, was sowing groundnut in her

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field, respondents 2 to 9 herein proceeding towards her and threatened the victim, then attacked her with a spade and thereby caused injuries. After the occurrence, the de-facto complainant/ P.W.1 gave a complaint before the first respondent/Police, based on which, the case was registered against the respondents 2 to 9 under Sections 147, 148, 324, 430 and 506 II I.P.C. After following the legal formalities, charges were framed and as the accused pleaded not guilty the case was posted for trial.

4. In support of the prosecution case, apart from the revision petitioner/ P.W.1, 7 other witnesses were examined as P.Ws. 2 to 8 and Exs. P1 to P5 were also marked.

5. Learned Judicial Magistrate after considering the oral and documentary evidence, also hearing both the learned counsel, held that the charges levelled against the accused have not been proved beyond reasonable doubt and accordingly acquitted the accused under Section 248(1) Code of Criminal Procedure.

6. Learned counsel appearing for the revision petitioner would contend that the revision petitioner/ P.W.1, herself being the injured witness, has given cogent and corroborative evidence with regard to the occurrence, that took place on 1.9.2002 at about 1.30 p.m., due to property dispute between the parties. Apart from P.W.1 and P.W.2 has given corroborative evidence, as eye witness, but the Trial court, without considering the evidence, properly has recorded acquittal.

7. As per the prosecution evidence, P.W.8, the Sub Inspector of Police attached to the respondent/Police Station, registered a case based on the complaint given by from P.W.1, in Crime No.531 of 2002 under Sections 147, 148, 324, 430 and 506 II I.P.C. After registering the case, proceeded to the scene of occurrence, prepared observation mahazar Ex.P.2, and rough sketch Ex.P.5, in the presence of the witnesses. He has also examined the witnesses and after receipt of the copy of Accident Register, Ex.P.3, examined the doctor, who had given treatment to P.W.1 and after completing the evidence filed the charge sheet. According to the learned counsel for the revision petitioner, the finding of the Court below is perverse, the trial court, without considering the evidence, has acquitted respondents 2 to 9.

8. Per contra the learned counsel appearing for the respondents 2 to 9 would contend that there is alteration in the F.I.R. as well as in Ex.P.1 complaint given by the de-facto complainant/P.W.1. On a perusal of Ex.P.1/complaint as well as F.I.R, Ex.P.4, it is seen that in two places, name of Periyasamy was altered as Subarayan and the counter signature found both in the complaint and the F.I.R. shows that it has been made by the very same person. It is not in dispute

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that the author of the complaint is the de-facto complainant, who was examined as P.W.1, whereas the author of the F.I.R. is, as per the evidence, P.W.8, Sub-Inspector of Police, attached to the first respondent/Police Station. Therefore, it could not be legally possible to be countersigned by the very same person in Ex.P.1 and Ex.P.4. Further, as contended by the learned counsel for the respondents 2 to 9, the material object, namely spade which was said to be used for causing injuries on P.W.1 was not recovered and marked, for the reasons best known to the prosecution. The non-marking of the material object, without proper explanation, would show that the case was not conducted by the prosecution.

9. Learned Judicial Magistrate has pointed out that there is contradiction in the evidence of P.Ws.1 and 2 with regard to the occurrence and subsequent message conveyed by P.W.2 to P.W.4 over telephone. Similarly, with regard to the offence under Section 506 (ii) I.P.C., P.W.1 has stated that A1 and A2 had threatened that they would not leave P.W.1 alive, but in the evidence, there is some variation as found by the court below.

10. The learned counsel for the respondent has cited the following decisions, in support of his contention.

1. Kishan Swaroop Vs. Government of NCT of Delhi, reported in AIR 1998 Supreme Court 990.

2. Thankappan Nadar and others Vs. Gopala Krishnan and another, reported in 2003 Supreme Court Cases (Cri) 1205

11. In the decision reported in AIR 1998 Supreme Court 990 Kishan Swaroop Vs. Government of NCT of Delhi, it has been held thus:

> "It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

12. In this case the de-facto complainant is the injured witness in the occurrence. The first respondent/complainant has not preferred any appeal. I am of the considered view that de-facto complainant, being preferred this revision, has locus standi to prefer the criminal revision, which cannot be questioned by the respondents 2 to 8/ accused. Therefore, I am of the view that the aforesaid decision is not applicable to the facts of this case.

13. In Thankappan Nadar and others Vs. Gopala Krishnan and another, 2003 Supreme Court Cases (Cri) 1205,

It has been categorically held by the Honourable

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Supreme Court, where the acquittal order did not suffer from any procedural illegality or manifest error of law and the court passing that order had not overlooked the evidence clinching the issue, held, High Court could not re-appreciate the evidence and set aside the order recorded by the Trial Court.

14. In State of Maharashtra Vs. Jagmohan Singh Kuldip Anand and others, 2005 M.L.J. (Crl.) 77, The Honourable Apex Court has ruled that High Court cannot re-examine and reappraise the evidence in a criminal revision and to come to a contrary conclusion, as the same is not sustainable in law.

15. In Bindeshwari Prasad Singh Alias Vs. State of Bihar (Now Jharkhand) and another (2002) 6 S.C.C. 650,

It has been held by the Supreme Court that under Section 401 of the Code of Criminal Procedure, while exercising the revisional jurisdiction, in the absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified in interfering with the concurrent finding of acquittal of the accused merely on re-appreciation of evidence.

16. In the light of the decisions referred to above, I am of the considered view in this case, that there is no manifest error of law or illegality committed by the court below. Similarly, the judgment of acquittal recorded by the court below cannot be construed as perverse finding, as there is no explanation for the correction or material alteration in the complaint and the FIR, countersigned by the same person, for the non-production of the material object, spade, allegedly used for causing injuries and the contradiction in the prosecution evidence, as discussed by the court below and the decision of the court below would not lead to miscarriage of justice and therefore, the High Court cannot interfere with the finding of acquittal, by the trial court. Hence, the criminal revision fails.

17. In the result, the Criminal Revision Case is dismissed.

akv

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1. The Judicial Magistrate No.2, Namakkal.

2. - do - thro' The Chief Judicial Magistrate,
   namakkal.

3. The Sub-Inspector of Police,
   Mohanure Police Station, Namakkal District.

4. The Public Prosecutor, High Court,
   Madras.

1 CC TO MR.M. SATHYANARAYANAN, ADVOCATE SR 5222

1 CC TO MR.N. MANOKARAN, ADVOCATE SR 4949

Crl.R.C.No.2046 of 2004

GM(CO)

BP/2.3

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